

REMARKS

The claims in the case are 40- 51. These claims have been drafted to cover the elected invention, and to avoid any of the 35 USC112, second paragraph rejections.

Claim 40 is supported and is taken from claim 1, with the “R” substituent supported by claim 19. Claims 41-43 correspond to claims 14- 16; Claim 44 corresponds to Claim 20; Claims 45-48 correspond to 25-28, and Claim 51 corresponds to Claim 30. Claims 49 and 50 are newly added, and are supported by the preferred group of substituents within the elected invention as exemplified by Table 5, pp 78-80 of the specification. No new matter has been introduced into the claims.

In specific response to the section 112 rejections: the proper Markush format has been used, and the various corrections to the definitions such as the correct antecedent basis, have been made.

Reconsideration and withdrawal of the rejections under 35 USC 112 is respectfully requested.

One of the other issues raised against the claims is that of double patenting or obviousness over copending USSN 11/332,557. As this case has not yet been examined, this is a provisional rejection and can be held in abeyance.

There are other double patenting rejections, based on US 6,747,028; US 7,071,192; and US 7,173,034. The examiner asserts that the patented references “generically claim the instant claimed invention”, Office action, 10/12/2007, p. 9. This assertion is incorrect, it is respectfully urged, and reconsideration is requested. As the claims are now drafted, there is no presumption of obviousness raised between the instant claims and the 3 cited patents.

The other grounds of rejection are based under 35 USC103 (a) as unpatentable over Lackey, WO 02/092575 and Janssens, WO 01/00611. The references do have a benzimidazole skeleton in common, but the specific substituents as now claimed in the instant amendment effectively refutes the presumption of obviousness. Reconsideration and withdrawal of the rejections is respectfully requested.

CONCLUSION

Reconsideration of the rejections in view of the amendments and arguments above is respectfully requested. Notice of allowance is respectfully requested.

Respectfully submitted,

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